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SUBJECT: PARLIAMENT DISCUSSES OPTIONS FOR PRESIDENTIAL ELECTION

REF: A. KABUL 2832
[B.](#) KABUL 601

[¶1.](#) (SBU) SUMMARY. Members of Parliament continue to debate the timing for next year's presidential election, many of them for political motives. Caught between certain legal provisions to hold the election as soon as March and the reality of logistical and climate challenges to doing so, MPs have proposed a variety of solutions. Since Lower House Speaker Yunus Qanooni allowed the discussion to re-enter parliamentary debate last month, MPs have solidified their calls for a "legal mechanism" to schedule an agreeable date for the election and replace the now-evaporated political consensus for a fall 2009 timeframe. President Karzai and UN SRSG Kai Eide recently discussed both constitutional and technical problems with the election date, but did not reach a conclusion on how to move forward. This cable discusses some of the options MPs have proposed. None of these options provides a clear way out of the disagreement over elections timing.

Election Timing Issues Resurfaces

[¶2.](#) (SBU) The Independent Election Commission announced on April 9 that presidential and provincial council elections would be held in the autumn. But some MPs have renewed the debate. Many of them are consistent Karzai opponents, but nearly all MPs agree that fall elections are unconstitutional without some legal provision clearing the way. Even generally pro-Karzai MPs have taken a stand against delaying elections until the autumn, framing their position as a defense of the Constitution.

[¶3.](#) (SBU) As discussed in reftels, Article 61 of the Afghan Constitution ends the president's term in May and calls for elections 30-60 days beforehand. The Constitution delegates logistical management of the election to the Independent Election Commission. The IEC, international donors, and Afghan political leaders reached a consensus in April 2008 that an election would be held in late 2009, in part by using language in Article 33 that "all Afghans have the right to elect and be elected" to justify postponing elections until the completion of voter registration. Karzai's political opponents, led by Lower House Speaker Qanooni, believed the president's re-election chances would increase the longer he stayed in office. The lack of a written agreement memorializing the April consensus allowed them to re-open the issue.

[¶4.](#) (SBU) Karzai met Kai Eide in early November to discuss the issue. Eide informed Karzai that Supreme Court Chief Justice Azimi sided with Qanooni's interpretation of the Constitution and urged him to reach out to influential MPs to resolve the

issue. We understand Karzai spoke with Qanooni and met with Lower House Deputy Speaker Mirwais Yasini (Nangarhar, Pashtun).

Five Bad Choices

15. (SBU) There are five solutions in play:

- Elections by April. Karzai's strongest critics, such as MP Rahman Oghly (Faryab, Uzbek), back elections as soon as possible. The Constitution's Article 61 ends the president's term on May 21, 2009. Elections must precede this date by 30-60 days. The fact that the 2004 election and Karzai's inauguration were both delayed is not material to the timing of the 2009 election. To pull off elections by this date, voter registration would need to be compressed, and significant overlaps in voter registration, candidate registration, and campaigning would occur. IEC staff have told MPs this option is logistically not feasible, but the IEC's poor relations with Parliament's leadership have kept this option alive.

- Call a Loya Jirga. Under the Constitution, the government can convene a Loya Jirga in times of "supreme national interest." MPs like Abdul Qayum Sajadi (Ghazni, Hazara) interpret this to include the debate over elections timing. However, organizing a Loya Jirga presents many logistical challenges and constitutional hurdles. Loya Jirga delegates would come from Parliament, provincial councils, and district councils, the latter of which have yet to be elected. Because a Loya Jirga sets its own agenda, it could

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open up the entire Constitution to amendment. It is even possible delegates would not use the Loya Jirga for setting an elections date, but to name a new president in lieu of elections. Supporters for this option include Pashtuns who say the security situation in southern and eastern provinces is not stable enough to hold an election.

- Declare a State of Emergency. The president can declare a state of emergency under certain conditions. Supporters of this option point to "serious rebellion" and "protection of independence" as constitutionally applicable scenarios. A state of emergency -- which requires the approval of Parliament if longer than two months -- could cover the gap between the end of Karzai's term in May and likely elections in September. According to Article 147, if a state of emergency is in place while a presidential term expires, the term can be extended for four more months. However, most Karzai opponents reject this option, as a constitutional state of emergency also gives the president the right to transfer some of the powers of the legislature to the executive branch.

- Transitional President. The Constitution assigns the Speaker of the Upper House as the successor in the absence of the president and the two vice presidents (whose terms expire concurrently with that of the president in May). Legal scholar MP Sayed Alemi Balkhi (Kabul, Hazara) raised this option recently, saying his United Front allies would not recognize a Karzai presidency that exceeded its constitutional term. However, Upper House Speaker Sebghatullah Mojaddedi is in frail health, confined to his house, and has been absent from Parliament for much of the past several months. Next in line should Mojaddedi pass on the option would be Lower House Speaker Qanooni, the most prominent public face of the opposition and runner-up to Karzai in 2004. Karzai's supporters would likely block that path.

- A Sense of the House Resolution. As a last resort, several MPs, including Faizullah Zaki (Jowzjan, Uzbek), have said they would support a "sense of the legislature" resolution or similar political solution agreeing to a new

election date. In conversations with PolOffs, most MPs recognize the serious hurdles to holding elections by the spring. Some are also aware of constitutional issues with the timing of their own re-elections in 2010, which could gain more attention if this issue is not dealt with effectively. Such a resolution would give Parliament a mechanism for setting a later date, while allowing the IEC and international technical advisors the time needed to conduct the elections. Article 33 of the Constitution may offer legal backing to this option.

Waiting for A New Consensus

¶6. (SBU) Most MPs recognize the challenges of a spring election and the importance of holding the most credible, participatory election possible. But the longer the issue continues, the harder it will be to resolve.

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